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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,402	09/12/2003	Andrew Vaillant	16051-7US	6670
20988	7590	10/09/2007		
OGILVY RENAULT LLP 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA			EXAMINER HURT, SHARON L	
			ART UNIT 1648	PAPER NUMBER
			MAIL DATE 10/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/661,402

Applicant(s)

VAILLANT ET AL.

Examiner

Sharon Hurt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 June 2007 and 18 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 1-51 and 57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 52-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

In view of the Pre-Appeal Brief Request for Review filed on May 15, 2007,  
PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following  
two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37  
CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an  
appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee  
can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have  
been increased since they were previously paid, then appellant must pay the difference between  
the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing  
below.

#### ***Status of the Claims***

Claims 1-57 are pending. Claims 1-51 and 57 are withdrawn from consideration. Claims  
52-56 are under examination.

#### ***Terminal Disclaimer***

The terminal disclaimer filed on **June 14, 2007** disclaiming the terminal portion of any  
patent granted on this application, which would extend beyond the expiration date of the full

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statutory term defined in 35 U.S.C. §§154 to 156 and 173 of U.S. copending Application No.

10/969,812 has been reviewed and is accepted. The terminal disclaimer has been recorded.

**The rejection of claims 52-56 on the grounds of nonstatutory double patenting over claims 53-57 of co-pending Application No. 10/969,812 is withdrawn pursuant the terminal disclaimer filed June 14, 2007.**

***Response to Arguments***

Upon review and consideration, Applicant's arguments, filed April 11, 2006, with respect to the reference of Peyman et al. have been fully considered and are persuasive.

**The rejection of claims 52-56 under 35 U.S.C. 102(e) as being anticipated by Peyman et al. is withdrawn.**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 52-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Cook et al. (US Patent 5,698,391, Dec. 1997).

Claims 52-56 are drawn to a method for selecting an antiviral compound for use against a target virus and not targeting HIV-1, HSV-2, CMV, RSV, parainfluenza virus, influenza virus and HBV comprising:

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- (A) Synthesizing a plurality of different oligonucleotides, wherein the anti-viral activity of said oligonucleotide occurs principally by a non-sequence complementary mode of action and wherein at least one of said oligonucleotides is at least 10 nucleotides in length.
- (B) Testing said oligonucleotides for activity in inhibiting the ability of said target virus to produce infectious virions.
- (C) Selecting said oligonucleotide having a pharmaceutically acceptable level of activity for use as an anti-viral agent.
- (D) Wherein said different oligonucleotides comprise:
  - (a) Randomers of different length.
  - (b) A set of oligonucleotides of different length, each oligonucleotide in said set comprising the sequence of the shortest oligonucleotide in said set.
  - (c) A plurality of oligonucleotides comprising a randomer of at least 6 nucleotides in length.
  - (d) Oligonucleotides are not complementary to any mRNA sequence of said target virus.

Cook et al. (hereinafter Cook) teaches a method for selecting oligomers from a pool of random nucleic acids sequences, which inhibit viral proliferation (Column 2, lines 13-16 and 60-61). The oligomers are randomized which bind to any protein, nucleic acid or other target molecule (column 2, lines 57-62). The plurality of sets of oligomers can target molecules derived from several viruses including papillomavirus and rhinovirus (column 10, lines 35-39). Cook teaches oligonucleotides having 10, 11 and 16 nucleotides in length comprising an 8-mer (see Examples 9, 30-33, 40 and 42).

### ***Conclusion***

This action is non-final.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Hurt whose telephone number is 571-272-3334. The examiner can normally be reached on M-F 8:00 - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sharon Hurt

September 28, 2007

A handwritten signature in black ink, reading "Bruce Campell". The signature is written in a cursive, flowing style.

**BRUCE R. CAMPELL, PH.D  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600**